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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Closed Captioning and Video)
Description of Video Programming)

Implementation of Section 305 of)
the Telecommunications Act of 1996)

Video Programming Accessibility)

Federal Communications Commission
Office of Secretary

MM Docket No. 95-176

TO: The Commission

**COMMENTS OF THE
NATIONAL CAPTIONING INSTITUTE**

Respectfully submitted,

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February 28, 1997

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EXECUTIVE SUMMARY

This proceeding presents the Commission with a landmark opportunity to add the final link to the chain which the Federal Government and numerous private entities have been struggling to create for almost two decades in their efforts to make closed captioning a reality for all Americans. The National Captioning Institute ("NCI") -- created in 1979 as part of the public-private partnership which developed the closed captioning technology -- commends the Commission for its efforts to date in this proceeding and submits these comments in an effort to ensure that the Commission takes into account a number of basic principles in the development of the new captioning rules.

NCI supports much of what the Commission has set forth in the NPRM. We also believe, however, that in order properly to implement the Congressional mandates contained in new Section 713 of the Communications Act -- to ensure that new programs be "fully accessible" through closed captions and that providers or owners of library programs "maximize the accessibility" of those programs through closed captions -- it is essential for the Commission to adopt the following basic principles as part of its new rules:

First, once a program has been captioned or reformatted, all subsequent distributions of that program must be done with the captions intact;

Second, the level of captioning undertaken as of the effective date of Section 713 should be set as a floor under the new rules;

Third, exemptions from the captioning requirements should be narrowly limited to situations where it would either "make no sense" to caption the program or where the imposition of a captioning requirement would effectively preclude the production or distribution of the program;

Fourth, relatively rapid schedules should apply to the captioning of new and library programs which are intended for wide audience distribution (while longer schedules may be set for other programs); and

Fifth, the obligation to caption certain types of programming may be more properly placed on entities other than broadcasters and Multichannel Video Programming Distributors ("MVPDs") where economic circumstances warrant.

NCI also believes it is appropriate for the Commission to establish quality and accuracy standards for the non-technical aspects of captioning. This can be accomplished through a simple self-policing and self-reporting mechanism, as described in these comments.

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Exhibits: 1 -- NCI's Captioning Rates
 2 -- Comparison of Captioning
 and Production Costs

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COMMENTS OF THE
NATIONAL CAPTIONING INSTITUTE

The National Captioning Institute ("NCI") submits these introductory comments in response to the Commission's January 17, 1997, Notice of Proposed Rulemaking in this Docket ("NPRM"). At this stage of the proceeding, our comments are intended to be primarily informational in nature and to set forth certain basic principles which we believe should guide the Commission's implementation of the mandates contained in new Section 713 of the Communications Act (enacted as Section 305 of the Telecommunications Act of 1996). NCI expects to review the other comments submitted in response to the NPRM in order to determine whether it should advance more specific recommendations to the Commission.

I. **BACKGROUND**

NCI was founded in 1979 for the purpose of implementing on a national scale the closed captioning system developed over many years by the Public Broadcasting Service, in conjunction with several private companies and with funding from the then-Department of Health, Education & Welfare. NCI was established as, and remains, a nonprofit 501(c)(3) corporation. Throughout its existence, NCI has devoted its efforts to expanding the scope and reach of closed captioning for the tens of millions of people in the United States who are deaf or hard of hearing. These efforts have involved all aspects of closed captioning, from research and development designed to advance the state-of-the-art of captioning, encoding and decoding technologies, to the marketing of captioning services and products at constantly decreasing prices.

The proper implementation of Section 713 holds the potential for providing the last critical link in the chain which the Federal Government, NCI and others have been struggling to create throughout the past two decades, in that it would solve the "supply" side problem of the captioning equation. Specifically, when closed captioning was first introduced in the late 1970's, it was recognized that the full implementation of the technology faced substantial hurdles with respect

to both the supply of captioned programs and the demand for such programs (as evidenced by the number of persons who purchased the decoders necessary to receive the captioned programs):

- ° on the one hand, many broadcasters and programmers were reluctant to caption large numbers of their programs until a substantial number of TV households were equipped with decoding capability; and
- ° on the other hand, persons who are deaf or hard of hearing were reluctant to acquire decoders in large numbers until a substantial number of programs were captioned.

For several years, this dilemma was exacerbated by the fact that both the costs to caption programs and the cost of the decoders were significantly higher than they are today. However, recent advances led primarily by NCI -- again, in conjunction with numerous private entities and with funding and new legislation from Congress -- have changed this equation. The cost to caption all types of video programming has decreased considerably over the past several years. Indeed, for most types of popular video programming (and certainly for programming intended for wide audiences) the current captioning costs are de minimus -- i.e., in most cases considerably less than 1% -- in relation to either the costs to produce those programs or the revenues which are generated through their distribution. In

addition, the Television Decoder Circuitry Act of 1990¹ put an end to the "demand" side of the problem by requiring that substantially all televisions sold in the U.S. include built-in decoding capability. The effect of that Act, as implemented by this Commission, is that by the end of this century virtually all TV households will be able to receive closed captions.

The last link in the chain relates to increasing the supply of captioned programs, which Congress has now mandated through new Section 713 of the Communications Act. The Commission's task is to implement the clear directions it has been given by the Congress to ensure that new programs are "fully accessible" through closed captions and that the providers or owners of library programs "maximize the accessibility" of those programs through closed captions. As it does so, the Commission will write the final chapter on the efforts of this public-private partnership which has struggled for almost 20 years to bring the full benefits of closed captioning to all Americans.

¹ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b) (1994)). See In re Amendment of Part 15 of the Commission's Rules to Implement the Provisions of the Television Decoder Circuitry Act of 1990, 6 FCC Rcd. 2419 (1991), recon. granted in part, 7 FCC Rcd. 2279 (1992).

II. IMPLEMENTATION PRINCIPLES

Because the cost to caption video programming is now so low, NCI believes that the implementation of Section 713 can and should be undertaken rapidly -- particularly in the case of programming intended for wide audiences. NCI has attached as Exhibit 1 to these comments a listing of the rates it currently charges to caption various types of video programs. We have also attached as Exhibit 2 a comparison between the captioning costs and the typical costs to produce various types of programs. As the Commission can observe, the captioning costs are de minimus.

Compared to the minimal cost of captioning -- or perhaps in recognition of that fact -- the Congressional mandates in Section 713 are very strong and direct:

- all (non-exempt) new programs are to be fully accessible through closed captions; and
- providers or owners of (non-exempt) library programs are to maximize the accessibility of those programs through closed captions.

NCI believes that the general interpretation of these requirements by the Commission, as outlined in the NPRM, is clearly correct. The Commission has recognized the significant benefits of closed captioning, both as a means of understanding video programming and as an

important educational tool.² The NPRM also proposes a narrow approach on the issue of exemptions from the captioning obligations.

In our view, however, the proposed implementation approach in the NPRM does not fully account for several key principles, and it does not properly distinguish between programs intended for wide audiences and those with a more narrow reach. By lumping together all types of new programming in the proposed implementation schedules, the rules could have the unintended effect of actually decreasing the availability of closed captions in the near term. We believe these defects can readily be cured if the Commission were to adopt the following basic principles to guide the further development of its new rules:

First, once a program has been captioned or reformatted, all subsequent distributions of that program must be done with the captions intact;

Second, the level of captioning undertaken as of the effective date of Section 713 should be set as a floor under the new rules;

² See, e.g., NPRM, ¶ 10 & n.28; Notice of Inquiry in MM Docket 95-176, 11 FCC Rcd. 4912 at ¶¶ 9-12 (1995); Report on Video Programming Accessibility in MM Docket No. 95-176, 1996 WL 420237 at ¶¶29-37 (rel. July 29, 1996) ("Report").

Third, exemptions from the captioning requirements should be narrowly limited to situations where it would either "make no sense" to caption the program, or where the imposition of a captioning requirement would effectively preclude the production or distribution of the program;

Fourth, relatively rapid schedules should apply to the captioning of new and library programs which are intended for wide audience distribution (while longer schedules may be set for other programs); and

Fifth, the obligation to caption certain types of programming may be more properly placed on entities other than broadcasters and Multichannel Video Programming Distributors ("MVPDs") where economic circumstances warrant.

Each of the foregoing principles is discussed further in the following subsections of these comments. In addition, in the next section of these comments (Section III, below), NCI addresses the NPRM's questions regarding the establishment of standards for quality and accuracy of captioning. We believe that the captioning audience would benefit greatly from the adoption of a relatively simple and low-cost process for self-policing and self-reporting by captioning distributors.

A. Previously-Captioned Programs

Since the inception of closed captioning almost twenty years ago, hundreds of thousands of hours of video programs have been closed captioned. Many of these movies, series and other programs are

retransmitted each year over broadcast stations, cable systems and the facilities of other MVPDs, or are distributed in home video stores. Frequently, no significant changes to the original captions are necessary in connection with such retransmissions or distributions or, if reformatting or other changes are necessary, the time and cost to do so are insignificant.

To maximize the accessibility of captioned programming, NCI believes there can be no serious question that a proper implementation of Section 713 requires that all previously-captioned programs be required to carry their captions (reformatted as necessary) in connection with any subsequent retransmission or distribution. This is the general practice in the video industry today. Incorporating this fundamental principle into the FCC's new captioning rules is both consistent with the Congressional goal and should not create a hardship for program providers or owners.

B. Current Captioning Levels

As the Commission observed in the NPRM (NPRM, ¶¶ 10-17) and in its earlier Report on Video Programming Accessibility (Report, ¶¶ 17 & 56-83), a substantial amount of video programming is already captioned each year on a voluntary basis. This is particularly true with respect to national broadcast programming, certain

major cable program networks and the home video market. It is also becoming increasingly true in the case of nationally syndicated programs and certain regional and local programs.

NCI believes that the "fully accessible" and "maxim[um] accessibility" requirements of Section 713 would clearly be violated if the amount of captioning undertaken as a result of the FCC's new rules were to decrease. However, that result may be possible in light of the way in which the Commission has proposed to implement Section 713(b)(1) regarding new programs. By lumping together all types of providers and all types of programs under the proposed 8 (or 10) year implementation schedule, numerous providers and programmers could conceivably reduce the amount of captioning they now undertake, at least in the near term. Such a result would fly in the face of the new law, since it can hardly be said that rules designed to implement a law which requires more captioning could actually permit less captioning.

Thus, NCI believes that the Commission's new rules should set as a floor the level of captioning being undertaken as of the effective date of the 1996 Act (February 1996). As in the case of our recommendation regarding previously-captioned programs, we believe that this principle is both required by the

new law and would not impose any hardship in the video industry. Rather, it would simply preserve the status quo.

C. Exemptions

Section 713(c) contains standards and procedures by which certain programs may be exempted from the captioning requirements ultimately established by the Commission.³ The NPRM takes a conservative stance regarding exemptions and NCI believes that is the correct approach. Pending a more fully developed record on this issue, we believe that as a general principle:

- ° exemptions for classes of programs should be narrowly limited to those programs which it "makes no sense" to caption (such as programs which either cannot be captioned, due to certain foreign language restrictions, or which are primarily textual or do not contain

³ At several places, the NPRM makes reference to the view that the Commission is also authorized to exempt classes of providers, rather than simply individual programs, classes of programs or individual providers. See, e.g., NPRM at ¶¶ 31 & 85. NCI does not see in the statute any authority by which the FCC can exempt classes of providers, and it is encouraged by the Commission's tentative conclusion not to grant any such exemptions in any event. Id. at ¶ 85.

In addition, NCI recognizes that the statute relieves a provider of certain captioning obligations if that would violate contracts in effect on the date of enactment of the 1996 Act. NCI is aware of no such contracts and would be quite interested in learning whether there are any, and the rationale for them. We note that in its discussion of this issue the NPRM did not cite any examples of any such contracts.

any dialogue to be captioned, such as dances or symphonies); and

- ° exemptions for individual providers or owners who petition for relief should be granted only upon a convincing showing that the captioning requirement would effectively preclude the program's production or distribution.⁴

With respect to all other new and library programs, we believe the Commission should focus its attention on when (not whether) the programs should be captioned. The Commission should deal with concerns which may be raised by individual providers or owners through the implementation schedules, and not through the FCC's exemption authority.

D. Wide Audience Programs

A significant drawback to the implementation approach proposed in the NPRM is its failure to properly differentiate between the captioning requirements for programs that reach wide audiences and those that reach narrow audiences. While that distinction is an undercurrent in the NPRM, NCI believes it should be made more explicit in the implementation schedules for the captioning of both new and library programs.

As discussed above, a substantial amount of the programming which today is being distributed nationally

⁴ See NPRM at ¶ 90 & n.171 (quoting relevant excerpts from the Conference Committee and House Reports on new Section 713).

or otherwise to wide audiences (including, for example, regional and local news programs in the country's large markets) is being captioned. That status quo should be preserved as a floor. The broadcasters, major cable programmers and others who are now captioning these programs on a voluntary basis should be praised for their efforts. Similarly situated providers or owners who are not currently captioning significant amounts of their wide audience new or library programming should be called upon to come up to those levels on a rapid basis -- well in advance of any 8 or 10 year implementation schedules which may be established for other types of new or library programs.

This distinction in the implementation schedules -- based on the number of potential viewers -- makes good economic sense. That is because, in the case of wide audience programming, the cost of captioning is clearly de minimus in relation to production costs and anticipated distribution revenues. So too, where the size of an individual market is substantial and the cost of captioning is low (i.e., the captioning of local news at \$120 per hour in the country's largest TV markets), a significant time lag for the implementation of the captioning requirements is neither necessary nor logical. NCI believes that the Congressional goals of "full" and "maxim[um]" accessibility would be materially

advanced if the Commission were to make this distinction in the implementation schedules.

E. Captioning Responsibility

As a final point of distinction regarding the new captioning requirements, NCI believes the Commission should re-think its tentative decision as to where to place the captioning responsibility for certain types of video programming. While it appears to make good sense to impose the captioning obligation on national or regional providers with respect to programs they control, it may not make good sense with respect to others who do not control the bulk of the programs they distribute. For example, with respect to a program (or series) to be syndicated throughout the country, it would be more logical to impose the captioning obligation on the syndicator, rather than on the 100 or 150 individual stations or cable systems which may carry it. In this example, the cost of captioning each episode (e.g., \$400 in the case of a typical 30 minute sitcom episode) is de minimus at the syndicator level (where hundreds of thousands of dollars may be spent for the syndication rights for each episode and even more is anticipated from participant revenues), while that may not be true if the captioning cost per episode had to be borne at the individual station or cable operator level.

There are numerous other examples of the foregoing principle -- such as the distribution of cable programming generally -- which we expect will be more fully developed in the record in the proceeding. As a general principle, NCI believes it is important for the Commission to place the captioning responsibility at the point in the video production/distribution process where it makes the best economic sense to do so. We believe that will ensure that the Congressional mandates are fulfilled and that the burdens on particular entities are minimized.

III. CAPTIONING STANDARDS

The Commission has sought comment on whether it should establish standards for captioning accuracy and quality. As noted in the NPRM, NCI believes that "the Commission should consider minimum quality standards, sufficient to ensure consistent, adequate service to the public without impairing competition among captioning services." (NPRM, ¶ 105).

In addition to supporting the Commission's proposal to extend Rule 76.606 to all video program providers (NPRM, ¶ 110) NCI believes the FCC should adopt a relatively simple procedure of self-policing and self-reporting by those who are responsible for ensuring that captioning is distributed.

Under this procedure, captioning service distributors would be required to provide a simple annual report to the FCC regarding the quality and accuracy of their captioning services. These reports, which would be available for public inspection, would cover such matters as: spelling accuracy; accuracy of transcription; punctuation; placement; identification of nonverbal sounds; and such other matters as the Commission deems appropriate.

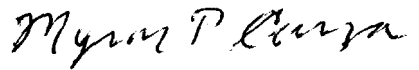
This procedure would impose very little real cost on caption providers or distributors -- who should already be undertaking the kind of self-policing that would readily generate the type of report we envision -- while at the same time bringing great benefit to the sizeable audience which is critically dependent upon high quality, accurate captions.

IV. CONCLUSION

NCI commends the Commission and its staff for the substantial work you have undertaken to date on this matter and we welcome the opportunity to assist you further as this matter proceeds. This docket presents a landmark opportunity for the Commission to bring to a successful close a challenging process which has been underway for two decades as the Federal Government and many private entities have strived to ensure that closed captioning achieves its full potential. The "demand"

side of the captioning service equation has been solved, and it is now up to the Commission to solve the "supply" side, in a manner consistent with the strong Congressional mandates to ensure "full" and "maximum" accessibility of video programs through closed captions.

Respectfully submitted,



Myron P. Curzan
Chief Executive Officer
National Captioning Institute

Attachments

February 28, 1997



Information from the National Captioning Institute

NCI RATE CARD

Effective Fall 1996

<u>• Pop-on Prerecorded Captioning</u>	<u>Hourly Rate</u>
– Original Captioning	\$800
– Reformatting	\$400
 <u>• Roll-up Prerecorded Captioning</u>	
– Original Captioning	\$600
– Reformatting	\$320
 <u>• Live Captioning</u>	
– Pay-Per-View/Special Events	\$600
– Videoconferences	\$500
– Syndication	\$450
– National News	\$400
– Sports	\$400
– Local News	\$120± ¹

¹This is an average rate for illustration purposes. The actual rate varies with the hours captioned per week and other variables.



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COMPARISON OF CAPTIONING COSTS
vs.
PRODUCTION COSTS¹

<u>Program Category</u>	<u>Production Cost</u>	<u>Captioning Cost</u>	<u>% of Production Cost</u>
Made-for-TV Network Movie	\$3,500,000	\$ 1,600	.04%
Primetime Sitcom (30 minutes)	\$ 750,000	\$ 400	.05%
Primetime Drama (60 minutes)	\$1,200,000	\$ 800	.07%
Syndicated Pre-Recorded (60 minutes)	\$ 825,000	\$ 800	.10%
Syndicated Talk (60 minutes)	\$ 120,000	\$ 450	.38%

¹These figures are estimates based on an informal survey of industry professionals.

CERTIFICATE OF SERVICE

I, Mary E. Presswood, Secretary of the National Captioning Institute, certify that, on this 28th day of February, 1997, I served one copy of the foregoing Comments of the National Captioning Institute by hand on each of the following persons:

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